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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/887,172	06/22/2001	John M. Harris	CE08961R	7797

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EXAMINER

NGUYEN, BRIAN D

ART UNIT PAPER NUMBER

2661

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/887,172	Applicant(s) HARRIS ET AL.	
	Examiner Brian D. Nguyen	Art Unit 2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-18 and 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-18 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 20 and 24-27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/21/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 18 and 20 are objected to because of the following informalities:

Claim 18, line 16, it is suggested to insert --target-- before "CDMA".

Claim 20, line 1, "19" should be changed to --18--.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 recites the limitation "the speech" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 12, 14-16, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being obvious over Silvestri (2002/0119792) in view of Tiedemann et al (2001/0034233).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention “by another”; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Regarding claim 12, Silvestri discloses a method of setting up a dispatch call to a target mobile communication device (102, 103 of figure 1) over a code division multiple access (CDMA) air interface (see CDMA in paragraph 0028), comprising: receiving a page notification from a fixed equipment network at the target mobile communication device, the page notification including a dispatch notification (see paragraph 0037); transmitting a page response (see acknowledgement in paragraph 0043; and transmitting a talk permission message to an originating CDMA mobile communication device from the fixed equipment network (see MAC CON CFM message in paragraph 0039). Silvestri does not specifically disclose measuring and determining if a power level is above a

preselected threshold and transmit the measurement in the response. However, measuring a signal level at a mobile unit and comparing the measured signal level with a threshold to determine if a communication with the mobile unit can be established is well known in a CDMA power control system. Tiedemann discloses this well known feature (see paragraph 0092). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to measure the power level as taught by Tiedemann in the system of Silvestri in order to determine if a communication channel with the mobile unit should be established or not because the signal level effect the quality of the communication.

Regarding claim 14, Silvestri further discloses the method is performed concurrently with fixed equipment network setup a call path between an originating device and the fixed equipment network (see paragraph 0042-0043).

Regarding claims 15 and 16, Silvestri further disclose setting up the call path between an originating device and the fixed equipment network comprises setting up the call path between an originating CDMA mobile communication device and the fixed equipment network (see CDMA in paragraph 0028 and the reserved traffic bearer in paragraph 0040).

Regarding claims 18 and 23, Silvestri discloses a method of setting up a dispatch call between an originating code division multiple access (CDMA) (see Silvestri teaches the use of CDMA in paragraph 0028) mobile communication device (101 of figure 1) and a target CDMA mobile communication device (102, 103 of figure 1), comprising: transmitting a dispatch call origination message from the originating CDMA mobile communication device to a fixed equipment network over a CDMA channel, the dispatch

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call origination message containing a target identifier corresponding to the target CDMA mobile communication device (see PP 101 transmits a dispatch call in paragraph 0030), in response to the transmitting, initiating the set up of a traffic channel between the originating CDMA mobile communication device and the fixed equipment network (see paragraph 0034), paging the target CDMA mobile communication device end from the fixed equipment network (see paragraph 0036); receiving a page response from the target CDMA mobile communication device at the fixed equipment network (see acknowledgement in paragraph 0043), and transmitting a talk permission message to the originating CDMA mobile communication device from the fixed equipment network (see MAC CON CFM message in paragraph 0039). Silvestri does not specifically disclose the page response including a pilot power measurement. However, measuring a pilot power and transmit the measurement in a response is well known in a CDMA power control system. Tiedemann discloses this well known feature (see paragraph 0092). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to measure and include the power measurement in the response as taught by Tiedemann in the system of Silvestri in order to help in determining if a communication channel with the mobile unit should be established or not because the signal level effect the quality of the communication.

Regarding claims 21-22, Silvestri further discloses setting up a traffic channel between the target mobile communication device and the fixed equipment network according to a retransmission protocol to allow retransmission of data packets over the traffic channel (see data packet in paragraph 0024. Note that a data packet can be retransmitted when the packet is lost or damaged).

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6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silvestri in view of Tiedemann as applied to claim 12 above, and further in view of Song (2001/0008523).

Regarding claim 13, Silvestri in view of Tiedemann does not specifically disclose determining a strongest pilot signal and a serving cell corresponding to the strongest pilot signal, and scanning a paging channel of the serving cell corresponding to the strongest pilot signal. However, Song discloses this limitation (see paragraph 0005). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to determine the best quality serving cell as taught by Song in the system of Silvestri in order to select a serving cell with the best quality communication.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silvestri in view of Tiedemann as applied to claim 12 above, and further in view of Mysore (6,304,558).

Regarding claim 17, Silvestri in view of Tiedemann does not specifically disclose the setting up the call path between an originating device and the fixed equipment network comprises setting up the call path between a computer and the fixed equipment network. However, Mysore discloses this limitation (see col. 3, lines 47-53). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the computer for the dispatch communication as taught by Mysore in the system of Silvestri in order to improve system flexibility.

Allowable Subject Matter

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8. Claims 20 and 24-27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Monell et al (6,654,608), Rozenstrauch et al (6,862,273), Panchal et al (6,519,239), and Chinitz et al (5,914,958).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D. Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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10/20/05

A handwritten signature in black ink, appearing to read 'Brian Nguyen', with a long horizontal flourish extending to the right.

BRIAN NGUYEN
PRIMARY EXAMINER